

# **EXHIBIT 1**

3/29/2023

FIRM #8093

STATE OF MICHIGAN  
IN THE TRIAL COURT FOR THE COUNTY OF WASHTENAW

FOX NEWS NETWORK, LLC,

Petitioner,

v.

Case No. 18-000100-ZZ  
Hon. Carol Kuhnke

J. ALEX HALDERMAN,

Respondent.

\_\_\_\_\_ /

MOTION HEARING  
BEFORE THE HONORABLE CAROL KUHNKE  
Wednesday, March 29, 2023 - 2:36 p.m.

APPEARANCES:

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3/29/2023

FIRM #8093

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TABLE OF CONTENTS

WITNESSES:	PAGE
(None.)	
EXHIBITS	
(None.)	

3/29/2023

FIRM #8093

1 Ann Arbor, Michigan

2 Wednesday, March 29, 2023 - 2:36 p.m.

3 - - -

4 THE CLERK: Fox News Network, LLC versus Alex  
5 Halderman, 18-100-ZZ.

6 THE COURT: Appearances?

7 MR. DEMOREST: Good afternoon, Your Honor. Mark  
8 Demorest for Dr. Halderman. I have with me Dr. Halderman,  
9 as well as Halsey Knapp, who's from Krevolin and Horst in  
10 Atlanta, and is counsel in the Curling litigation.

11 MS. QUADROZZI: Good afternoon, Your Honor.  
12 Jaye Quadrozzi, on behalf of Fox News. I have with me  
13 Paul Salvaty. He is with the law firm of Winston and  
14 Strawn, and he is representing Fox News in the Delaware  
15 action.

16 THE COURT: All right. I have, essentially, a  
17 renewed motion to quash the out-of-state subpoena. Go  
18 ahead.

19 MR. DEMOREST: Yes, Your Honor. I'm going to  
20 focus on responding to the arguments raised by Fox News in  
21 its response to the motion to quash.

22 The service issue was resolved. After the last  
23 hearing, we agreed to accept service, but the question is  
24 whether the deposition should proceed. We believe that  
25 the Court should quash the subpoena because it's really

3/29/2023

FIRM #8093

1 trying to compel Dr. Halderman to give involuntary expert  
2 testimony. Fox News argues that one can be both a fact  
3 and an expert witness, and while that general proposition  
4 is true, it doesn't really apply to the facts of this  
5 case.

6 The classic example of someone who's both a fact  
7 and potentially an expert witness is a treating physician.  
8 You know, the treating physician could be called as a fact  
9 witness to testify about the patient's condition, the  
10 patient's symptoms, what treatment was given, and what the  
11 outcome was, but if there's expert testimony, that goes  
12 beyond fact witness.

13 In this case, everything that they want to ask  
14 Dr. Halderman about is because he's an expert on election  
15 security, and let me take an example. About -- they've  
16 said that they're not going to ask about the Curling case,  
17 and that certainly resolves one issue, although I suspect  
18 that there may be some issues, if there is a deposition,  
19 about what questions are permitted or not. But if we take  
20 the Antrim County situation as an example, they claim that  
21 Dr. Halderman is a fact witness as to what happened in  
22 Antrim County regarding the 2020 election, but he was not  
23 present in Antrim County when votes were cast, when  
24 ballots were counted. None of the events of the 2020  
25 election was he a witness to. He only has any information

3/29/2023

FIRM #8093

1 about the events in Antrim County because he was hired by  
2 the State of Michigan as an expert witness to conduct an  
3 investigation and prepare a report. So his only knowledge  
4 is as an expert. It's not accurate to try to label him as  
5 a fact witness and then try to get expert testimony from  
6 him.

7 In addition to that, Your Honor, we need to  
8 consider the timing of these events. We've looked at the  
9 Dominion versus Fox News complaint that was attached by  
10 Fox News, which alleges defamation. The last alleged  
11 defamatory statement that's discussed in the complaint  
12 occurred on January 26, 2021. Dr. Halderman's expert  
13 report concerning Antrim County wasn't issued until March  
14 26, 2021, two months later. So the, you know, the  
15 existence and the contents of his reports could not have  
16 been known to anyone at Fox News on or before January 26,  
17 2021.

18 In addition to that, Your Honor, there's no need  
19 to -- and no justification to compel Dr. Halderman to give  
20 involuntary expert testimony in this case. Both Fox News  
21 and Dominion Voting Systems have retained and have filed  
22 with the Delaware court disclosures of experts on election  
23 security. Fox News has hired Dr. Dan Wallach, a professor  
24 of computer science at Rice University. Dominion has  
25 hired Dr. Avi Rubin, a professor of computer science at

3/29/2023

FIRM #8093

1 Johns Hopkins University. So they have similar expertise  
2 to Dr. Halderman. They've each been retained by the  
3 respective parties in that case. There's no reason to  
4 impose on Dr. Halderman to give testimony where he's not  
5 been retained as an expert by either party.

6 If the Court is considering allowing any  
7 deposition, I think there are a number of issues that  
8 would need to be discussed about how the deposition would  
9 be handled and what would be the procedure if objections  
10 are raised. There's a protective order in place from the  
11 Curling case from the Federal Court in Georgia, and  
12 contrary to the assertion made by Fox News, there is a  
13 protective order regarding the Antrim County case. I  
14 spoke with the attorney general's office. If there is a  
15 deposition, they would want to attend and potentially  
16 object to questions that would invade attorney-client  
17 privilege or work-product protection regarding the State  
18 of Michigan.

19 But I don't want to presume, Your Honor, or  
20 suggest that the Court will allow the deposition. So I  
21 would prefer to, you know, first address -- or ask the  
22 Court to address the issue about whether there will be a  
23 deposition at all, and then we can go to the issue of, if  
24 there is a deposition, how it would be conducted.

25 I'm happy to answer any questions, Your Honor.

3/29/2023

FIRM #8093

1 THE COURT: I have -- I glanced at the report, I  
2 didn't pour through it, and at the time that I reviewed  
3 it, I wasn't thinking of the question that's come to me  
4 now, which is: In the course of his investigation and  
5 preparing his report, did Dr. Halderman conduct interviews  
6 or otherwise come into possession of information that's no  
7 longer available or a process that can't be replicated by  
8 others?

9 MR. DEMOREST: Your Honor, I don't know the  
10 answer to that question. If you'd like Dr. Halderman to  
11 address it, he can, but -- but I think we also would have  
12 to be sensitive and would have to consult with the  
13 attorney general's office about what -- you know, what is,  
14 is or not allowed to be disclosed pursuant to a protective  
15 order. But I think Dr. Halderman could address whether  
16 there's any information he has that wouldn't be in the  
17 possession of others.

18 If you'd like Dr. Halderman --

19 THE COURT: It was Exhibit --

20 MR. DEMOREST: -- to address that, Your Honor.

21 THE COURT: It's the Exhibit 3 that is the  
22 report, isn't it?

23 MR. DEMOREST: Yes.

24 I guess I would also raise the issue, Judge,  
25 that if Dr. Halderman is not an expert witness, and he's



3/29/2023

FIRM #8093

1 presumably being called as a -- they've said they're only  
2 calling him as a fact witness, the rule that an expert  
3 witness cannot -- can rely on hearsay would not apply. So  
4 any statements that anyone else made to Dr. Halderman, if  
5 he's a fact witness, you know, would be hearsay. He  
6 couldn't testify to that at a trial.

7 THE COURT: Well, maybe yes, maybe no. And in  
8 any event, that wouldn't be the end of the inquiry whether  
9 it's admissible through him at trial, but it might send  
10 counsel in the direction of what they're looking for.

11 I'm pulling up the report, again, to see whether  
12 the answers to my questions, at least with respect to the  
13 nature of his investigation of who he talked to, is in the  
14 report before I consider asking Dr. Halderman directly.

15 Exhibit 3 starts on Page 177 of the Odyssey  
16 version.

17 All right. If there's no objection, I would ask  
18 Dr. Halderman this: Is it possible for someone else to  
19 replicate the work that he did -- or you did. I'm talking  
20 about you in the third person, sir, and I apologize. Is  
21 it possible for somebody else to replicate your work on  
22 this?

23 DR. HALDERMAN: Your Honor, thank you. I  
24 believe it's completely possible for someone to replicate  
25 the work, given access to the -- the same data that --

3/29/2023

FIRM #8093

1 that underlies the report.

2 THE COURT: As I'm looking at the report again,  
3 it does appear that it's based on data and not interviews.

4 DR. HALDERMAN: That's correct. That's correct.  
5 I probably had one or two brief conversations with an  
6 administrator in Antrim County to -- but they were really  
7 not the basis of this report. They were just, perhaps,  
8 clarifying things that were in the data.

9 THE COURT: Okay. Let me hear from the movant.

10 MS. QUADROZZI: Your Honor, are you looking for  
11 the response from Fox?

12 We are opposing the motion for the protective  
13 order.

14 THE COURT: Yes.

15 MS. QUADROZZI: Your Honor, I want to make -- I  
16 want to make two primary points, but I want to start here,  
17 and that is that in the underlying defamation suit, Fox is  
18 facing allegations that it never should have reported on  
19 claims of election fraud because the claims weren't just  
20 false, but they were obviously false.

21 What the Plaintiff, Dominion Voting Systems, is  
22 saying is that, essentially, everyone knew that hacking an  
23 election is factually impossible. Dr. Halderman, however,  
24 has been saying for years that hacking an election isn't a  
25 remote possibility, but it poses a real and serious risk.

3/29/2023

FIRM #8093

1 And this is something that he has been saying before he  
2 was engaged as an expert in the Curling and before he  
3 conducted the Antrim County analysis that resulted in that  
4 public report. So the information and his public  
5 commentary on cyber security issues and Dominion is what  
6 Fox is seeking here, nothing more. And it is highly  
7 relevant to the trial defenses of Fox News. And the  
8 hardships to Mr. Halderman are minimal considering the  
9 efforts that Fox is taking, as outlined in our moving  
10 papers, to narrow the scope of the testimony that is being  
11 sought.

12 I want to focus on two points. The first is  
13 that we're seeking permissible testimony from a fact  
14 witness. We are not seeking to depose Mr. Halderman about  
15 his expert testimony in the Curling case, which is  
16 protected by the protective order, and we are not  
17 interested in seeking to go beyond the bounds of that.  
18 We're not seeking information about that equipment or  
19 those vulnerabilities in Georgia. What we are seeking is  
20 his pre-2019 public commentary, opinions, and reports that  
21 talk about cyber security and voting machine  
22 vulnerabilities, as well as his publicly published report  
23 on Antrim County. We understand that there may be issues  
24 that he has not included in that public report, for  
25 instance, reports that go to discussions that he may have

3/29/2023

FIRM #8093

1 had with the AG's office on his scope of engagement, and  
2 Fox is not going to attempt to elicit that information.

3 The topics that Fox News is interested in are  
4 outlined on our papers at Page 8, and those pertain to  
5 public papers, articles, testimonies, and demonstrations,  
6 all of which make up his factual testimony. The narrative  
7 around this vote flipping, which is the basis for Fox's  
8 defamation case -- excuse me -- for Dominion's defamation  
9 case did arise in part from events in Antrim County. The  
10 Antrim County report is slated as evidence. It is on the  
11 -- it is on the exhibit list and is intended to be  
12 introduced in evidence in that Delaware trial, and its  
13 contents are going to end up being debated by people who  
14 did not write it. The jury should hear from the testimony  
15 from the author. His -- he has a broad base of factual  
16 knowledge, he acknowledges this in his affidavit that  
17 pre-date his work in Curling, and Fox has a right to probe  
18 that information just as it could with any other witness  
19 with relevant knowledge subject to usual limits on  
20 discovery. The Michigan law makes this clear.

21 We cite for Your Honor the Micheli versus  
22 Michigan Auto Case which provides that, to the extent an  
23 expert witness acquired information as a factual witness  
24 or as a result or consequence of his normal business  
25 activities and duties, then the expert is treated as if

3/29/2023

FIRM #8093

1 they were any other potential witness and the scope of  
2 discovery is only limited by the provisions of  
3 MCR 2.302(B)(1). That is exactly the situation here.

4 Based on his affidavit, there's no doubt that  
5 Dr. Halderman did acquire confidential information through  
6 his work as an expert in Curling. But on the flip side,  
7 there's also no doubt that he has acquired information as  
8 a fact witness as a result of his normal business  
9 activities and duties as a researcher, an author, and a  
10 speaker on issues of election and voting machine security  
11 outside of the realm of Curling. As a fact witness,  
12 Dr. Halderman can only avoid the subpoena if it seeks  
13 testimony outside the scope of discovery, and 2.302(B)(1)  
14 provides that parties can get discovery regarding any  
15 non-privileged matter that is relevant to a parties'  
16 claims or defenses that's proportional to the needs of the  
17 case. And the Court Rule goes on to say that you weigh  
18 relevance and you weigh the complexity and in the  
19 importance of the stakes at issue.

20 And here, Fox clearly sees testimony that is  
21 relevant to the party's claims or defenses. The Delaware  
22 lawsuit is about voting machine technology and the  
23 implausibility of allegations related to voting machine  
24 vulnerabilities and malfunctioning. That is directly  
25 within Dr. Halderman's knowledge of -- as a fact witness.

3/29/2023

FIRM #8093

1 His deposition testimony doesn't become any less relevant  
2 because there may be other cyber security professionals  
3 out there.

4 Dr. Halderman is a unique fact witness here. He  
5 investigated Antrim County's misreporting and assessed the  
6 causes of that which involved the use of Dominion Voting  
7 Systems. In his public report, he examines not only the  
8 equipment at issue, but he identifies and writes about  
9 individuals and entities involved, some of whom Dominion  
10 now identifies as live trial witnesses and intends to  
11 bring them forward as witnesses in Delaware. This bears  
12 directly on Dominion's defamation allegations and Fox  
13 News's defenses, and Dr. Halderman is the only one who can  
14 explain -- the only witness who can explain the findings  
15 of his report.

16 Merely pointing out to the jury his report isn't  
17 enough. Fox News has a right to defend himself -- defend  
18 itself against Dominion's allegations that it improperly  
19 reported on preposterous charges, and it has a right to do  
20 so through competent witness testimony. Dr. Halderman's  
21 fact testimony is not only relevant, it is necessary.

22 The proportionality analysis also factors  
23 disclosure. On the burden's side, Dr. Halderman does  
24 express what is a legitimate concern about violating his  
25 obligations in the Curling litigation, but Fox News

3/29/2023

FIRM #8093

1 proposed limitations. That's why we were careful and we  
2 wanted to identify in detail for Your Honor what the  
3 deposition topics would be. Those limitations should  
4 eliminate that concern of Dr. Halderman's. There was no  
5 need for Fox to appear before the Curling court and there  
6 will be no need for mid-supervision by that court because  
7 the crafting of the topics, the factual information that  
8 we are intending to ask him is outside of that range. If  
9 there is a dispute that arises, we can -- the parties can  
10 request the supervision of the special master in Delaware.  
11 It has one that has been very involved in discovery in  
12 that case. But apart from the confidentiality concerns of  
13 Curling and then now is raised by my brother counsel in  
14 Antrim County with the AG'S office, Dr. Halderman doesn't  
15 have any other burdens or expenses that he identifies that  
16 would be faced in connection with his testimony.

17 So that leaves, kind of, his remaining point,  
18 which is that Fox News is out of time for this discovery,  
19 based on where the case in Delaware is. That isn't true.  
20 Fox News has been trying to secure Dr. Halderman's  
21 deposition testimony for months, we have the record on  
22 that. In any event, he is a third-party witness, and he  
23 doesn't -- it is not his basis, it is not his standing to  
24 complain about the timeliness of discovery. If the  
25 parties -- if Dominion wishes to oppose the proper

3/29/2023

FIRM #8093

1 testimony, that is something that should be handled at the  
2 Delaware court, as should the issue of the admissibility  
3 of any --

4 MR. DEMOREST: Your Honor --

5 MS. QUADROZZI: -- as should the admissibility  
6 of any of the testimony. If, in fact, there are issues as  
7 to whether the evidence adduced from Dr. Halderman is  
8 admissible, that is something that is handled by the  
9 Delaware trial court. It's not a basis under Michigan law  
10 to preclude the taking of his deposition. In its narrowed  
11 form, we think that the subpoena is neither unreasonable  
12 nor oppressive and ask that the Court deny the motion to  
13 quash and the request for fees. In light of the upcoming  
14 trial, we'd ask the Court to compel an appearance date in  
15 14 days, but we are prepared to take the deposition during  
16 trial if the Court is inclined to go with a 21-day length  
17 of time, as requested in the alternative relief proposed  
18 by Dr. Halderman.

19 MR. DEMOREST: May I respond, Your Honor?

20 THE COURT: You may.

21 MR. DEMOREST: Okay. So the core issue that  
22 Ms. Quadrozzi identified is whether an election can be  
23 hacked. They want to dispose Dr. Halderman because he's  
24 an expert on that subject. They haven't identified any  
25 fact of which he would be aware independent of his



3/29/2023

FIRM #8093

1 expertise in election security. For example, they mention  
2 an opinion piece that he wrote, I believe, for the New  
3 York Times several years ago describing a particular  
4 machine. It was not a Dominion machine. It's not a  
5 machine that was in use in the 2020 election. But the  
6 point is that the only reason they wanted to talk to him  
7 is because he is an expert, and they don't have a right to  
8 depose him as an expert when he's not been engaged. There  
9 is simply no factual knowledge that Dr. Halderman has  
10 independent of his expertise. They tried to argue, well,  
11 an expert may have factual knowledge that he gains in the  
12 ordinary course of business, but you can't stand that on  
13 its head and say, well, his normal job is to be an expert;  
14 therefore, everything that he learns is a fact. There  
15 isn't any basis that they have -- that Fox News has  
16 provided that would make him a fact witness to anything  
17 other than, you know, the work he has done in analyzing  
18 election security, doing investigations, writing about  
19 that subject, speaking about that subject. It's all his  
20 work as an expert. And there's nothing that he has that's  
21 a fact, certainly nothing that he has a fact that they  
22 can't get from someone else. So the deposition of him, we  
23 believe, is improper for that reason. It's an involuntary  
24 expert deposition, which is not permitted.

25 THE COURT: The last time this matter was before

3/29/2023

FIRM #8093

1 the Court, I questioned whether it was Michigan or  
2 Delaware that should consider whether Dr. Halderman could  
3 be compelled to testify. And I'm satisfied now, pursuant  
4 to MCL 600.2201, 2206, 2203 that -- that it's Michigan law  
5 that applies, and it's Michigan that would and must  
6 determine whether Dr. Halderman can be compelled to  
7 testify.

8 Dr. Halderman is desired by Fox News because,  
9 apparently, he's the very best expert on election security  
10 and not because he has any factual information or  
11 knowledge that would -- that Fox News can't otherwise get.

12 The reference to the overlap of fact witnesses  
13 and expert witnesses is -- I agree with Mr. Demorest, is  
14 -- comes up most commonly in the situation of a physician  
15 examining a patient who also happens to be a plaintiff in  
16 a personal injury suit, and there you have a doctor who  
17 has personal knowledge when he testifies that he examined  
18 the patient and found X, Y, and Z, and the doctor saw or  
19 identified something that -- some symptom or  
20 characteristic of the plaintiff and then the doctor does  
21 have factual knowledge of the symptom or the  
22 characteristic. Or the doctor can testify that, the  
23 patient told me X, Y, and Z, and there the doctor acquires  
24 personal knowledge, personal information that is factual  
25 and not in the nature of expert opinion.

3/29/2023

FIRM #8093

1           The next question is, when you're deposing this  
2    doctor, well, what does that mean to you in your  
3    professional experience, and then the doctor explains what  
4    it means, that the patient said, this is how the incident  
5    happened, or the doctor sees this sort of symptom or  
6    characteristic of the plaintiff and there's a way that  
7    that fits within a theory of the case or the defense.

8           There's nothing similar about the situation  
9    here. Dr. Halderman has studied election security, and as  
10   I said, may be the best expert in expert security -- in  
11   election security. The fact that he has opinions and that  
12   he's good at his job doesn't mean that anyone can call him  
13   into court to testify. He has the right to his own  
14   opinions and to share them if he wants to and to not share  
15   them if he doesn't want to. The fact that he's written on  
16   it publicly doesn't mean that he can be called -- can be  
17   forced to be an expert. And I haven't heard any other  
18   argument that persuades me that Dr. Halderman can or  
19   should be forced to sit for a deposition or to assist in  
20   any way if he does not wish to do that, which, clearly, he  
21   does not.

22           So the motion to quash -- and I apologize, I  
23   referenced the movant and the respondent -- the movant is  
24   Dr. Halderman in this case moving to quash the  
25   out-of-state subpoena, and I will grant that motion.

3/29/2023

FIRM #8093

1 MR. DEMOREST: Thank you, Your Honor. I'll  
2 prepare an order.

3 MS. QUADROZZI: Thank you, Your Honor.

4 DR. HALDERMAN: Thank you.

5 (At 3:03 p.m., hearing concluded.)  
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3/29/2023

FIRM #8093

1 STATE OF MICHIGAN )

2 ) SS

3 COUNTY OF WAYNE )

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5 I certify that this transcript, consisting of

6 twenty (20) pages, is a true, complete, and correct record of

7 the proceedings held in this matter on March 29, 2023.

8

9 Date: December 16, 2024

10

11 Linda M. Morelli, CER-3349

12 County of Wayne, State of Michigan

13 My Commission expires: June 26, 2027

14 *Linda M. Morelli*

